IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.Rev.Pet.No. 2913 of 2003()

CRA.212/2002 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.883/1999 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED:

M.S.JOSEY @ JOSEPH, S/O. SEBASTIAN,
MUZHANGANTHARA HOUSE, NEAR J.B.S.SCHOOL,
KORAMPADAM DESOM, ALUVA.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SRI.M.F.MOHAMMOD SIYAD

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. PAUL A.C., S/O. CHANDY,
ATHIPARAMBIL HOUSE, KALOOR, ERNAKULAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2913 OF 2003

Dated this the 9th day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.883/1999 on the file of the J.F.C.M.-II, Ernakulam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned counsel for the complainant.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above

finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner.

5. It is admitted by both sides that the matter has been settled between the parties and the complainant has been paid the amounts due(less the amount of Rs.1,00,000/- lying in deposit) pursuant to the order passed by this court. Accordingly, the 1st respondent complainant shall be entitled to withdraw the said amount of Rs.1,00,000/- lying in deposit before the JFCM-II, Ernakulam. In the light of the settlement between the parties, the sentence imposed on the revision petitioner is altered to one of imprisonment till rising of court and the amount already paid as well as the amount in deposit to be withdrawn by the complainant shall be treated as the compensation amount. The revision petitioner shall undergo the sentence of imprisonment till rising of court within three weeks from today.

This Revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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